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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,863	11/06/2001	Emmet Joseph Howard Peter Andrews	1817-0116P	4454

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EXAMINER

WEBB, SARAH K

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/985,863

Applicant(s)

ANDREWS, EMMET JOSEPH
HOWARD PETER

Examiner

Sarah K. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 77-87 is/are allowed.
- 6) ☒ Claim(s) 1-19, 22, 24-42, 44, 45, 47-55, 57 and 58 is/are rejected.
- 7) ☒ Claim(s) 20, 23, 43, 46, 56, 59 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1,6-19,22,31-42,45,54,60, and 65-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,019,790 to Militana in view of US Patent No. 5,569,300 to Redmon.

Militana discloses a device that includes a pair of forceps arms (10,11) with handles (13,14) joined at a pivot joint. A tube gripping means (31) holds a length of tubing (35) rearward of the blades (15,16). The tube gripping means (31) is included as part of the structure of a "guide blade" (22). The "guide blade" (22) connects to the pivot joint by a pivot pin (21), which is shown in cross section in Figures 4 and 7. Therefore, the length of tubing (35) is mounted to the pivot joint. If the device is flipped over, the guide blade (22) lies below the other blades (15,16). Figure 2 shows that the guide blade (22) can extend substantially the same distance from the pivot joint as the other blades (15,16). This configuration is very similar to that of applicant. The recitation "to carry an intercostal drain" in claims 14 and 37 is directed toward intended use, so this is not given full patentable weight. The tubing (35) of Militana could be an "intercostal drain."

2. Militana fails to form the forceps arms so that the handles are splayed apart when the blades are in the engaged position and spring urged apart. Redmon discloses another type of surgical forceps. Redmon teaches by illustration that the arms of a surgical forceps device can be configured so that the handles are splayed apart when the blades are in the engaged position, as most clearly shown in Figure 1. A spring (21) urges the handles to the splayed position, so that the blades are

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normally biased a closed position (column 4, lines 23-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the handles of Militana to be spring urged to a splayed position, as Redmon teaches that this forms a forceps device with normally closed blades. One of ordinary skill in the art would recognize obvious advantages of this configuration of the forceps arms as preventing accidental opening of the blades and allowing the blades to clamp tissue without the need for an external force holding the blades in a closed position.

Regarding claims 22,45, and 58: Militana includes members (26,27) mounted between each handle (10,11) and the guide blade (22), but the members are not "springs." Redmon teaches the use of two leaf spring members (21) mounted between handles to urge them apart. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the members of the modified Militana device as leaf springs, as Redmon teaches that this structure biases the handles apart so the blades are normally closed.

Regarding claims 17,18,40,41, and 54: Applicant does not disclose that the particular shape of the blade provides any advantages over other shapes or solves any particular problem. A simple modification to the cross sectional shape of a blade is within an ordinary level of skill in the art.

3. Claims 2-5,21,24-30,44,47-53,55,57,58, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Militana in view of Redmon, as applied above, and further in view of US Patent No. 4,608,982 to Pollard.

Militana and Redmon fail to form the blades to have an arcuate shape with open mouths facing each other. Pollard discloses a forceps device with blades (22) having such a shape. Pollard teaches that the arcuate, open-mouth shape is helpful

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in grasping and delivering a tube (column 3, lines 43-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the blades of the modified Militana device to have an arcuate, open-mouth configuration, as taught by Pollard, as this shape would help in the delivery of blade (22) and tube (35). The height of these modified blades would also be substantially similar to the height of the tube (35) (see Figure 2).

Allowable Subject Matter

4. Claims 77-87 are allowed. Claims 20,23,43,46,56, and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior art fails to disclose or suggest a releasable tube gripping means in the form of a guide blade mounted on a pivot joint of a pair of forceps arms, the blade extending rearward and terminating in a bifurcated portion, wherein each bifurcated arm carries an arcuate gripper.

Response to Arguments

5. Applicant's arguments filed 10/4/05 have been fully considered but they are not persuasive. Applicant argues that Militana and Redmon are not analogous to one another. Both devices are surgical forceps and are classified in the same art within the office. Although different procedures for use of the devices are disclosed in the patents, the devices are considered to be analogous due to their similar structure and function. All forceps function to open and close a pair of blades, regardless of the medical procedure disclosed in combination with the device. Redmon is only relied

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upon for teaching a configuration of forceps arms that allows them to be normally biased in a closed position. This modification does not alter the function of the Militana device nor render it inoperable.

6. Applicant argues that since the arms of the Redmon device have a different structure from Militana, the combination of the references would be inoperable. The differences in the shape of the arms do not preclude obviousness. Applicant argues that adding a spring to bias the arms of the Militana device open would not be obvious. Applicant also argues that there is no motivation to modify the forceps arms of Militana so that they are normally biased closed. It is the combination of these references that is relied upon for overcoming the claim limitations. Redmon is relied upon for teaching a configuration of forceps arms that allows the blades to be normally biased in a closed position. One of ordinary skill in the art would be capable of combining the teaching of Redmon with the Militana device to obtain an operable pair of forceps that is normally biased closed by a spring positioned between the arms. This combination would include simple changes in the shape of the arms and configuration of the hinge. One of ordinary skill in the art would recognize obvious advantages of this configuration of the forceps arms as preventing accidental opening of the blades and allowing the blades to clamp tissue without the need for an external force holding the blades in a closed position.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K. Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW
12/19/05

JULIAN W. WOO
PRIMARY EXAMINER